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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cec App. 116 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p align="center"><b>HIGH COURT OF CHHATTISGARH, BILASPUR</b></p> <p align="center"><b><u>Criminal Appeal No.116/2002</u></b></p> <p><b><u>APPELLANT</u></b></p> <p>Babulal<br/>S/o Jethuram Dewangan,<br/>Aged about 33 years,<br/>R/o Rojgaripara, Kondagaon,<br/>District Baster.</p> <p align="center"><b><u>Versus</u></b></p> <p><b><u>RESPONDENT</u></b></p> <p>State of Chhattisgarh,<br/>Through D.M.Baster</p> <p align="center"><b><u>CRIMINAL APPEAL UNDER SECTION 374 (2) OF CR.P.C.</u></b></p> <p><b>DB: HON'BLE SHRI JUSTICE L.C. BHADOO,<br/>HON'BLE SHRI JUSTICE SUNIL KUMAR SINHA, J &amp; J.</b></p> <p align="center"><b><u>ORAL ORDER</u></b><br/><b><u>(01.11.2007)</u></b></p> <p><b><u>L.C. BHADOO, J.</u></b></p> <p>Shri K.K. Singh, Counsel for the appellant.<br/>Shri Akhil Mishra, Panel Lawyer for the State.<br/>Heard.</p> <p>The appellant/accused has preferred this appeal under<br/>Section 374(2) of the Code of Criminal Procedure questioning the<br/>legality and correctness of the judgment of conviction and order<br/>of sentence dated 13<sup>th</sup> December 2001 passed by the First<br/>Additional Sessions Judge, Jagdalpur, District Baster in S.T.</p> |                                                          |



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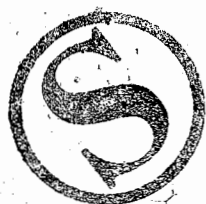
मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -2-                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>No.169/2001, whereby the learned First Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence punishable under Sections 302 and 307 of the IPC, for committing murder of Seema (daughter of accused) and attempting to commit the murder of Manju (wife of accused), sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months and R.I. for 7 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months respectively. Both the sentences are directed to run concurrently.</p> <p>Case of the prosecution in brief is that in the intervening night of 9<sup>th</sup> &amp; 10<sup>th</sup> February 2001, Smt. Manju (wife of the accused/appellant) along with her daughter - Seema Dewangan and accused/appellant were sleeping in their house. The appellant was suspecting fidelity of his wife -Manju, therefore, in the said night, he attacked Manju with the grinding stone, he also attacked Seema (daughter of accused) with the grinding stone and inflicted the fatal injury, as a result of which, Seema succumbed to the said injury. However, Manju survived. Chamru Ram (PW-1) gave merg intimation (Ex.-P/2), First Information Report (Ex.-P/1) in the Police Station - Narayanpur, based on that, the Investigating Officer registered the crime and left for the scene of occurrence. He prepared Site Plan (Ex.-P/3), plain soil, blood stained soil was seized under Ex.-P/4. After giving notices</p> |                                                          |

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>(Ex.-P/9) to the Panchas, prepared inquest (Ex.-P/10) on the body of the deceased -Seema. Body was sent for postmortem examination to the Primary Health Centre, Narayanpur under Ex.-P/11, where Dr. M.K. Suryawanshi conducted postmortem on the body of the deceased Seema. He opined that cause of death was coma due to head injury and death was homicidal in nature. He noticed one injury on the head of Seema in the size of 3" x 2" caused by hard and blunt object. He prepared postmortem report (Ex.-P/6). Injuries of Seema and Manju were examined by the same Doctor. He prepared injury report (Ex.P/7) in respect of Manju and found the following injuries :</p> <p>(1) Injury over the right orbit of eye in the size of 3" x 1 ½ cm x ½ cm.</p> <p>(2) Injury on right upper lip in the size of 1 cm x ½ cm x ½ cm.</p> <p>(3) Injury on right cheek in the size of 1cm x ½ cm x ½ cm.</p> <p>According to the Doctor, injuries were inflicted by hard and sharp object, bleeding was present. After X-Ray of the injury of Manju, it was found that there was a fracture of right supra orbital margin.</p> <p>While in police custody, accused/appellant gave memorandum (Ex-P/ 16) regarding the place where grinding stone</p> |                                                          |



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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश<br>५                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>was lying, in pursuance of that, grinding stone stained with blood was seized under Ex.-P/17. The Investigating Officer vide requisition (Ex.-P/19) enquired from the Doctor as to whether the injuries found on the bodies of Seema and Manju can be caused by the grinding stone in question, which was seized at the instance of the accused/appellant. He gave opinion (Ex.-P/19) that it may be possible to cause the injuries by the stone in question. Site Plan (Ex.-P/20) was prepared by the Halka Patwari. Seized Articles were sent to Forensic Science Laboratory under Ex.P/23.</p> <p>After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Narayanpur, who in turn committed the case to the Sessions Judge, Jagdlapur, from where learned Additional Sessions Judge received the case on transfer for trial.</p> <p>The prosecution in order to establish charge against the accused persons examined 10 witnesses. The statement of the accused/appellant was recorded under Section 313 of Cr.P.C., in which, he denied the material appearing against him and stated that he is innocent and has been falsely implicated in the crime in question.</p> <p>After hearing the arguments of counsel for the respective parties, learned Additional Sessions Judge convicted the accused as aforementioned.</p> |                                                          |



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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश - 5 -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>We have heard Shri K.K. Singh Counsel for the appellant and Shri Akhil Mishra, Panel Lawyer for the State.</p> <p>At the outset, Shri K.K. Singh has not disputed the homicidal death of Seema. Moreover, PW-10 -Manju, who is an eye witness to the incident (mother of the deceased and wife of the accused) has categorically stated that the accused/appellant attacked her and her daughter with grinding stone. Even Shri M.K. Suryawanshi (PW-4), who conducted the postmortem and examined the injury of Seema has stated that the cause of death was coma due to head injury and death was homicidal in nature. Therefore, from the above ocular and medical evidence, it is established that the death of Seema was homicidal in nature.</p> <p>As far as complicity of the accused/appellant in the crime in question is concerned, learned counsel for the appellant argued that even though the prosecution has examined Manju (PW-10), who is an eye-witness to the incident, but her evidence cannot be believed for the reason that her statement under Section 161 of Cr.P.C. was not recorded, she gave evidence for the first time before the Court. If she had witnessed the crime in question, her statement under Section 161 Cr.P.C. ought to have been recorded.</p> <p>On the other hand, learned counsel for the State argued that it has been mentioned in the charge sheet that on account of head injury of Manju, she lost memory; therefore, her statement</p> |                                                          |



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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश - 6 -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>could not be recorded at that time. However, in the due course of time, on account of treatment, she was able to regain her memory, then, she gave evidence in the Court.</p> <p>It is true that in the ordinary course, the witness to whom the prosecution want to examine before the Court in order to establish the crime against the accused, statement under Section 161 Cr.P.C. of that witness ought to have been recorded in order to enable the accused to raise his defence and to know that what particular evidence is going to be deposed by the witness against him. In absence of such statement, the accused is in immense darkness and is not able to make out a proper defence, but in the peculiar facts and circumstances of the case, if the statement of any witness is not recorded under Section 161 Cr.P.C., the evidence of such witness cannot be rejected out-rightly. Before placing reliance on the evidence of such witness, a Court is under obligation or duty bound to ensure that on account of non-availability of the statement of that witness under Section 161 Cr.P.C., no serious prejudice should be caused to the accused. Evidence of such witness must be scrutinized with care and circumspection in order to find out the truthfulness, correctness and veracity of the evidence of such witness. The evidence of such witness may affect the weightage to be attached to the evidence of the witness, but it does not render the evidence of such witness inadmissible.</p> |                                                          |



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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबन्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश<br>-7-                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>Applying the above principle, if we scrutinize the evidence of PW-10 -Manju, who has categorically stated that in the fateful night, she along with her husband - Babulal (accused), her daughter - Seema (deceased) were present in the house. On seeing some mistake, accused attacked her daughter, she sustained injury on head, as a result of which, she succumbed to the injury. She witnessed the incident, when her husband was attacking Seema. Bhuri Bai is known to her because they were residing in her house on rent. She has stated that the accused/appellant attacked her also with the grinding stone, due to which, she became unconscious. In cross-examination of this witness, she has stated that at the time of incident, she was pregnant and used to work in <i>Aanganbadi</i>. It is correct to say that on account of frequent visit of one person in their house, Babulal used to quarrel with her. It is correct to say that there are two doors in the house for ingress and egress. Many times, Babulal used to stay at Kondagaon, where he was working. It is incorrect to say that in the fateful night, accused/appellant came late in the house.</p> <p>PW-2 - Bhuri Bai has stated that accused-Babulal, Manju and Seema are known to her. Manju alongwith her daughter - Seema and husband - Babulal were residing in their house on rent. Babulal used to work in a hotel at Kondagaon. His wife - Manju was also working at Narayanpur in <i>Aanganbadi</i>. The</p> |                                                          |



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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश<br>- 8 -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>accused used to up and down from Kondagaon to Narayanpur. Seema has died. Three-four months back, on the date of incident, she was at her residence. Accused/appellant - Babulal, Manju and Seema were also present in their house. After taking dinner, she went to sleep; Manju and others also went to sleep. At about 5:00 a.m., she heard writhing of Manju, therefore, she called Manju, but there was no response from inside. She informed Chamruram - brother of Manju. Thereafter, she along with Chamruram came to the house of Manju, saw injury on the head of Manju and blood oozing out from the nose and ears of Seema. The accused/appellant was not in the house. Thereafter, they took both the ladies to Narayanpur hospital.</p> <p>In the cross-examination of Bhuribai (PW-2), the defence has not been able to bring any circumstance on record, which discredits the evidence of Bhuribai and establishes that accused and injured - Manju were not present in the house. Even in the cross-examination of Manju, defence has not been able to bring on record any circumstance, which establishes that accused was not present in the house in the fateful night or that Manju is giving false evidence. Moreover, the presence of Manju in the house is established by the fact that there was fatal injury on her head, which was seen by PW-2 - Bhuribai and brother of Manju - Chamruram. However, at that time, accused/appellant had already left the house; therefore, the presence of Manju in</p> |                                                          |

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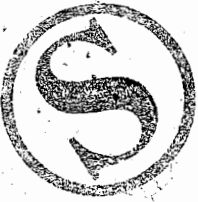
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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश<br>- 9 -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>the house in the fateful night cannot be doubted. Then, the next question arises as to why Manju will implicate her husband in a false case that too in a serious nature of murder of their daughter - Seema and attempting to commit her murder.</p> <p>In cross-examination of either of the prosecution witnesses, the defence has not been able to bring on record that there was any reason with Manju to implicate her husband in a false case. During the course of arguments, learned counsel for the appellant was not able to argue with force that on account of non-recording of statement of Manju under Section 161 of Cr.P.C. and ultimately, non-availability of the statement of Manju in any way prejudiced the accused. As has been discussed above, presence of Manju in the house as well as presence of the accused/appellant in the house in the fateful night when the crime in question was committed is established. Therefore, there is no reason before us to discard the evidence of Manju only on account of non-availability of her statement under Section 161 of Cr.P.C. Rather the evidence of Manju to a great extent is corroborated by the evidence of landlady - Bhuri Bai regarding presence of the accused, Manju and Seema in the fateful night in the house, therefore, the complicity of the accused/appellant in crime in question is established. To this extent, we do not find any illegality or infirmity in the judgment of the trial Court.</p> |                                                          |



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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश<br>- 10 -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>Mr. K.K. Singh submitted that as far as conviction of the accused under Section 302 of IPC for murder of Seema is concerned, there is no evidence on record to establish that the accused had the intention to cause the death of Seema. While drawing our attention to the evidence of Manju (PW-10), he argued that this witness has categorically stated that seeing some mistake, accused attacked and further in para 6, she has stated that the accused used to quarrel with her on account of coming of a person in their house frequently. Therefore, above fact shows that in a sudden quarrel and heat of passion, accused attacked them that too with the stone lying in the house. If the accused had intention to commit the murder of his wife and daughter, then, he ought to have attacked in a planned manner with preparation, that too with other deadly weapons, not with the grinding stone lying in the kitchen. He attacked only once to Seema and Manju. It is established that he was under frustration, as some quarrel took place between them and in a spur of moment, he picked up the stone, attacked the daughter and wife.</p> <p>On the other hand, learned counsel for the State supported the judgment of the trial Court.</p> <p>Having heard learned counsel for the parties, a perusal of the evidence of Manju, which has been referred by learned counsel for the appellant, probablise what has been argued by</p> |                                                          |



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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश<br>— 11 —                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>him, because, the whole thing happened in the night. Till the accused, his wife and daughter took the dinner, everything was normal and all of a sudden in the night, the incident happened. Manju has categorically stated that on seeing some mistake, accused/appellant attacked. Therefore, there is no clear and cogent evidence to establish that the accused attacked with the intention to cause death of Seema and attempt to commit the murder of Seema.</p> <p>For the foregoing reasons, the conviction and sentence of the accused under Sections 302 and 307 of IPC cannot be sustained. However, the manner in which the accused/appellant attacked the deceased with the grinding stone, it can be inferred that the accused had definite knowledge that he may likely to cause murder of Seema and cause injuries to Manju.</p> <p>In the facts and circumstances of this case, accused/appellant committed the offence under Section 304 Part-II of IPC for causing death of Seema and Section 325 of IPC for voluntarily inflicting grievous injury to Manju.</p> <p>In the result, the appeal partly succeeds.</p> <p>The conviction and sentence imposed upon the accused/appellant under Sections 302 and 307 of IPC are set aside. Instead thereof he is convicted under Sections 304 Part-II and 325 of IPC and sentenced to undergo R.I for 8 years and 5</p> |                                                          |



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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -12-                                                                                                                                                                                                                                                                                                                                   | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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| Shyna                              | <p>years respectively. It is directed that both the sentences shall run concurrently.</p> <p>It is stated that the accused/appellant is in detention since 14/2/2001 till date; therefore, he shall be entitled for the set off of the detention period already undergone against the sentence imposed upon him.</p> <p>Sd/-<br/>L.C. Bhadoo<br/>Judge</p> | <p>Sd/-<br/>Sunil Kumar Sinha<br/>Judge</p>              |